

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

HECTOR VAZQUEZ DIAZ, et al.,

Plaintiffs,

v.

RENE HERNANDEZ ARENCIBIA,

Defendant.

Civil No. 07-2097 (JAF)

OPINION AND ORDER

Plaintiffs, Héctor Vázquez Díaz ("Vázquez"), Tania Maldonado de Vázquez, and their conjugal partnership, bring this action against Defendant, René Hernández Arencibia, alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, and Puerto Rico law, and seeking \$50 Million in damages. Docket No. 1. Defendant moves for partial summary judgment on the damages claims, Docket No. 56, and on the RICO claims, Docket No. 57. Plaintiffs oppose both motions. Docket Nos. 67, 80.

I.

Factual and Procedural History

Unless otherwise noted, we derive the following factual summary from the statements of uncontested material facts and the attached exhibits.¹ Docket Nos. 57, 80.

¹ Local Civil Rule 56(d) requires parties replying to an opposition to a motion for summary judgment to submit a statement of material facts admitting, denying or qualifying any facts submitted by the opposing party. Local Civil Rule 56(e) states that "[f]acts contained in a supporting or opposing statement of material facts, if supported by record citations as

Civil No. 07-2097 (JAF)

-2-

1 Vázquez and Defendant entered into three business ventures
2 together beginning in 2004: (1) the "Mansiones Enterprise" (also
3 known as the "Estancias Project"), (2) the "Global Enterprise," and
4 (3) the "ABSI Enterprise."

5 **A. The Mansiones Enterprise**

6 In August 2004, Defendant and Vázquez formed the Mansiones
7 Enterprise, whereby they agreed to design and develop a housing
8 project in Trujillo Alto, Puerto Rico, with the understanding that
9 each party would be reimbursed for its respective contributions and
10 that profits would be divided equally. The project was expected to
11 generate \$9 Million in profits. Vázquez incurred \$170,878 in expenses
12 in designing and obtaining finance and permits for the Mansiones
13 Enterprise. Without Vázquez' knowledge or consent, Defendant
14 negotiated the sale of the property that was to be the site of the
15 Mansiones Enterprise. On December 24, 2004, Defendant sold the
16 property for \$2.5 Million. Defendant did not reimburse Vázquez for
17 the \$170,878 in expenses Vázquez had incurred.

18 **B. The Global Enterprise**

19 Also in 2004, Defendant asked Vázquez and two other individuals
20 to purchase shares in Global Health Plan and Insurance Company
21 ("Global"). Defendant sought investors because the Puerto Rico

required by this rule, shall be deemed admitted unless properly
controverted." Here, Plaintiffs submit an additional statement of facts
that Defendant does not controvert. See Docket No. 80. Accordingly, we deem
these facts admitted, to the extent that they are supported by the record.
See L. Cv. R. 56.

Civil No. 07-2097 (JAF)

-3-

1 Insurance Commissioner ("the Commissioner") required Global to
2 increase its capital to \$1 Million by December 31, 2004, and
3 Defendant was unable to invest the capital personally because Puerto
4 Rico law forbade him from having a majority ownership interest in the
5 company. Between July and December 2005, Vázquez bought 1,500 shares
6 of Global, valued at \$240,000. However, Defendant falsely represented
7 to the Commissioner that Vázquez had been a shareholder since
8 December 31, 2004. Defendant refused to provide Vázquez with
9 shareholder rights, including the right to participate in shareholder
10 meetings or to access Global's corporate records. Defendant also did
11 not provide Vázquez with a certificate of ownership of Global stock.
12 On December 4, 2006, Vázquez, through his attorney, requested
13 Defendant to provide him with a certificate of stock ownership, to
14 allow him to review Global's accounting books and records, and to
15 notify him of future meetings of the Board of Directors. Defendant
16 did not comply with these requests.

17 **C. The ABSI Enterprise**

18 On December 6, 2005, Defendant, Vázquez, and two other
19 individuals contributed a total of \$1.05 Million to a Florida
20 corporation that was later known as Advanced Building Specialties,
21 Inc. ("ABSI"). ABSI was a manufacturing company that used an Italian
22 building technology known as "M2". At ABSI's first shareholder
23 meeting, on April 7, 2006, the shareholders agreed to divide
24 ownership in proportion to the amount of capital contributed. Also at

Civil No. 07-2097 (JAF)

-4-

1 that meeting, the shareholders agreed that they would be reimbursed
2 for payments of ABSI's expenses, and that these payments would not
3 constitute capital contributions. Based on this agreement, Vázquez
4 owned 34.44% of ABSI, and Defendant owned 15.94%.

5 Between February and August 2006, without the knowledge or
6 consent of Vázquez or ABSI's Board of Directors, Defendant made
7 deposits to ABSI's bank account totaling \$1.27 Million. Defendant
8 then considered himself to be the majority shareholder of ABSI,
9 because he had contributed more than fifty percent of the capital in
10 ABSI's account. He then mismanaged ABSI by, among other things,
11 appointing unqualified people to key positions in ABSI, permitting an
12 employee to defraud ABSI by making unauthorized payments, purchasing
13 unduly expensive equipment without permission, and failing to deposit
14 payments from clients in ABSI's account. He also added two
15 individuals as officers of ABSI, unilaterally and without the
16 knowledge of all shareholders or ABSI's board of directors. As a
17 result of the mismanagement, ABSI lost its license to manufacture and
18 sell M2 construction technology on March 6, 2007. By the end of 2007,
19 ABSI had lost nearly all of its worth and was evicted from one of its
20 plants.

21 On November 20, 2007, Plaintiffs filed the present complaint in
22 federal district court. Docket No. 1. On March 16, 2009, Defendant
23 moved for partial summary judgment on damages, Docket No. 56, and on
24 the RICO claims, Docket No. 57. On April 15, 2008, Plaintiffs opposed

Civil No. 07-2097 (JAF)

-5-

1 Defendant's motion with respect to damages. Docket No. 67. On May 8,
2 2009, Plaintiffs opposed Defendant's motion with respect to the RICO
3 claim. Docket No. 80.

4 II.

5 Summary Judgment Standard under Rule 56(c)

6 We grant a motion for summary judgment "if the pleadings, the
7 discovery and disclosure materials on file, and any affidavits show
8 that there is no genuine issue as to any material fact and the movant
9 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).
10 A factual dispute is "genuine" if it could be resolved in favor of
11 either party, and "material" if it potentially affects the outcome of
12 the case. Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19 (1st
13 Cir. 2004). The moving party carries the burden of establishing that
14 there is no genuine issue as to any material fact; however, the
15 burden "may be discharged by showing that there is an absence of
16 evidence to support the nonmoving party's case." Celotex Corp. v.
17 Catrett, 477 U.S. 317, 325, 331 (1986). The burden has two
18 components: (1) an initial burden of production, which shifts to the
19 nonmoving party if satisfied by the moving party; and (2) an ultimate
20 burden of persuasion, which always remains on the moving party. Id.
21 at 331.

22 In evaluating a motion for summary judgment, we must view the
23 record in the light most favorable to the non-moving party. Adickes
24 v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). However, the non-

Civil No. 07-2097 (JAF)

-6-

1 moving party "may not rely merely on allegations or denials in its
2 own pleading; rather, its response must . . . set out specific facts
3 showing a genuine issue for trial." Fed. R. Civ. P. 56(e) (2).

4 **III.**

5 **Analysis**

6 Defendant argues that (1) Plaintiffs are not entitled to damages
7 because Vázquez has illegally practiced architecture in Puerto Rico,
8 Docket No. 56, and (2) Plaintiffs have failed to establish a RICO
9 violation, Docket No. 57. For the reasons stated below, we find that
10 Plaintiffs have not established that Defendant violated RICO.
11 Therefore, we need not consider Defendant's argument with respect to
12 damages.

13 **A. RICO**

14 Defendant urges us to grant summary judgment in his favor on the
15 RICO claims because Plaintiffs have failed to establish that
16 Defendant was a member of a criminal enterprise. Docket No. 57.

17 RICO renders it unlawful for any person associated with an
18 enterprise affecting interstate commerce to engage in "a pattern of
19 racketeering activity or collection of unlawful debt." 18 U.S.C.
20 § 1962(c). To state a claim, a plaintiff must show "(1) conduct
21 (2) of an enterprise, (3) through a pattern of (4) racketeering
22 activity." Soto-Negrón v. Taber Partners I, 339 F.3d 35, 38 (1st Cir.
23 2003) (citing N. Bridge Assocs., Inc. v. Boldt, 274 F.3d 38, 42 (1st
24 Cir. 2001)). To show the existence of an enterprise, the plaintiff

Civil No. 07-2097 (JAF)

-7-

1 must demonstrate that a group of people have associated together for
2 the purpose of committing crimes. United States v. Nascimento, 491
3 F.3d 25, 32 (1st Cir. 2007) (quoting United States v. Connolly, 341
4 F.3d 18, 28 (1st Cir. 2003)). "The enterprise must be distinct from
5 the pattern of racketeering activity" in that it must have a goal
6 more enduring than the completion of the particular criminal acts
7 comprising the RICO offense. Id. (citing United States v. Turkette,
8 452 U.S. 576, 587 (1981); Connolly, 241 F.2d at 25).

9 Here, Plaintiffs neither allege nor prove that Defendants were
10 members of a criminal enterprise. They repeatedly use the word
11 "enterprise" to refer to business ventures between Defendant and
12 Vázquez, but never describe any agreements between Defendant and
13 others as part of a group dedicated to committing crimes against
14 Vázquez. See Docket No. 80-4. In fact, Plaintiffs assert that
15 Defendant committed the alleged RICO violations without the knowledge
16 of other shareholders or of ABSI's Board of Directors. See id.
17 Because Plaintiffs have failed to present any evidence that Defendant
18 was a part of a RICO enterprise, Defendant is entitled to judgment as
19 a matter of law on Plaintiffs' RICO claims. Cf. Nascimento, 491 F.3d
20 at 32.

21 **B. Puerto Rico Claims**

22 Because we dismiss all federal claims, we decline to exercise
23 supplemental jurisdiction over Plaintiffs' Puerto Rico claims. See 28
24 U.S.C. § 1367(c)(3); Rivera v. Murphy, 979 F.2d 259, 264 (1st Cir.

Civil No. 07-2097 (JAF)

-8-

1 1992) (quoting Cullen v. Mattaliano, 690 F. Supp. 93, 99 (D. Mass.
2 1988)).

3 **IV.**

4 **Conclusion**

5 In accordance with the foregoing, we hereby **GRANT** Defendant's
6 motion for summary judgment, Docket No. 57, and **DISMISS** all federal
7 claims **WITH PREJUDICE**. We **DISMISS** Plaintiffs' Puerto Rico claims
8 **WITHOUT PREJUDICE**. Accordingly, we **DENY** as **MOOT** Defendant's partial
9 motion for summary judgment regarding damages, Docket No. 56.

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 20th day of May, 2009.

12 s/José Antonio Fusté
13 JOSE ANTONIO FUSTE
14 Chief U.S. District Judge